

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

LISA LIBERI and PHILIP J. BEG,  
ESQUIRE and THE LAW OFFICES OF  
PHILIP J. BERG and EVELYN ADAMS  
a/k/a MOMMA E and LISA M. OSTELLA  
and GO EXCEL GLOBAL,

Plaintiffs,  
vs.

ORLY TAITZ, a/k/a DR. ORLY TAITZ,  
a/k/a LAW OFFICES OF ORLY TAITZ;  
TAITZ, INC. and DEFEND OUR  
FREEDOMS FOUNDATIONS, INC. and  
YOSEF TAITZ and THE SANKEY FIRM  
and SANKEY INVESTIGATIONS, INC.  
and NEIL SANKEY and JAMES  
SUNQUIST and ROCK SALT  
PUBLISHING and LINDA SUE  
BELCHER a/k/a LINDA S. BELCHER  
a/k/a LINDA STARR; a/k/a  
NEWWOMENSPARTY a/k/a  
STITCHENWITCH a/k/a EVA BRAUN  
a/k/a WEB SERGEANT a/k/a KATY a/k/a  
WWW.OBAMACITIZENSHIPDEBATE.  
ORG and EDGAR HALE a/k/a JD  
SMITH; and CAREN HALE; and PLAINS  
RADIO NETWORK, a/k/a PLAINS  
RADIO NETWORK, INC. a/k/a PLAINS  
RADIO; and BAR H FARMS; and KPRN  
AM 1610; and DOES 1 through 200  
Inclusive,

Defendants.

CASE NO. 8:11-cv-00485-AG (AJW)

**NOTICE OF MOTION AND MOTION  
BY DEFENDANT ORLY TAITZ FOR  
STAY OF PROCEEDINGS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: August 8, 2011  
Time: 10:00 a.m.  
Dept.: Crtrm 10D

Judge: Andrew J. Guilford  
Magistrate Judge: Robert N. Block  
Trial Date: June 5, 2012  
Complaint Filed: May 4, 2009

**TO THE COURT, ALL PARTIES, AND/OR THEIR ATTORNEYS OF  
RECORD:**

**PLEASE TAKE NOTICE** that on August 8, 2011, at 10:00 a.m., or as soon  
thereafter as the matter may be heard by the above-entitled Court, located in Courtroom  
10D of the United States District Court, Central District of California – Southern Division,  
411 W. Fourth St., Santa Ana, CA 92701-4516, Defendants Orly Taitz (“Taitz”), “Defend  
our Freedoms Foundation”, Orly Taitz inc and Law offices of Orly Taitz will move this

1 Court for an order staying the entire case pending the disposition of the appeal filed by  
2 Defend Our Freedoms Foundations, Inc.

3 In conformance with the Court's order dated June 14, 2011, on June 30, 2011,  
4 counsel for Taitz requested leave to file a motion to stay the case. On July 7, 2011, the  
5 Court granted Taitz's request for "leave to file a motion to stay the case.

6 In conformance with Local Rule 7-3, a conference of counsel was held via an e-  
7 mail exchange which did not result in any resolution obviating the need for this motion.

8 This motion is based on this notice of motion and motion; the memorandum of  
9 points and authorities attached hereto; all of the pleadings and papers on file; any matter  
10 that may be presented in reply to any opposition filed by Plaintiff; and on any other matter  
11 that may be presented to the Court at the time of the hearing.

12 DATED: July 8, 2011  
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15 Dr. Orly Taitz, ESQ  
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22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **1. INTRODUCTION AND STATEMENT OF FACTS**

24 On or about June 14, 2011, the court denied Defendants' motion to strike the  
25 complaint based upon California Code of Civil Procedure section 425.16 ("Anti-SLAPP"),  
26 and to dismiss the case pursuant to Federal Rules of Civil Procedure Rule 12(b)(1) and (6).  
27 By that same order the court granted Plaintiffs leave to amend their complaint. (Decl. of  
28 Jayson Q. Marasigan, "Marasigan Decl.", Exhibit "1")

1 On June 17, 2011, despite having been given 45 days to file their amended  
2 complaint and possibly longer “[g]iven the health issues of counsel...”, Plaintiffs filed  
3 their first amended complaint. On June 27, 2011, Defendant Defend Our Freedoms  
4 Foundation, Inc. (“DOFF”) filed its notice of appeal regarding the court’s order denying  
5 Defendants’ motion to dismiss. Orly Taitz has not joined in on the appeal by DOFF.

6 On June 28, 2011, Taitz submitted her request for leave to file a motion to dismiss  
7 the first amended complaint based upon the Anti-SLAPP statute and Federal Rules of Civil  
8 Procedure Rule 12(b)(6). (Marasigan Decl., Exhibit “2”) On June 29, 2011, the Court  
9 denied Taitz’ request to file a motion to dismiss the first amended complaint based upon  
10 the Anti-SLAPP statute but granted Taitz leave to file a motion to dismiss based upon Rule  
11 12(b)(6). (Marasigan Decl., Exhibit “3”) The reason given by the court was because it had  
12 already ruled on an Anti-SLAPP motion regarding the initial complaint and DOFF’s  
13 pending appeal, it “declines to accept this requested new Anti-SLAPP motion.”  
14 (Marasigan Decl., Exhibit “3”)

15 Because of the ambiguity created by Plaintiffs having filed a first amended  
16 complaint prior to the notice of appeal having been filed, Taitz submitted her request to file  
17 her Anti-SLAPP motion to dismiss the first amended complaint. In accordance with  
18 California Code of Civil Procedure section 425.16(f), a special motion to strike an  
19 amended complaint as a matter of right must be filed within 60 days after service. (*Lam v.*  
20 *Ngo* (2001) 91 Cal.App.4th 832, 842, 111 Cal.Rptr.2d 582) Thereafter, a Defendant must  
21 seek leave of court which may or may not allow the special motion to strike according to  
22 its discretion. What is more, the purpose of the Anti-SLAPP statute – to provide  
23 defendants with an expeditious and relatively inexpensive way to dispose of lawsuits  
24 intended to chill speech and public participation – would be defeated if the case were  
25 allowed to proceed against her while DOFF’s appeal is pending.

26 Because Taitz will be severely prejudiced by having to proceed with the defense of  
27 this case during the pendency of DOFF’s appeal, Taitz hereby makes this motion for an  
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1 order staying the entire case pending disposition of DOFF's appeal.

2 **2. THE COURT'S DENIAL OF THE ANTI-SLAPP MOTION AS TO THE**  
3 **ORIGINAL COMPLAINT WAS AN APPEALABLE ORDER**

4 Under California law, an immediate appeal lies from the grant or denial of an anti-  
5 SLAPP motion (Cal. Civ. Proc. § 425.16(i)). Likewise, under federal law, an immediate  
6 appeal lies from denial of an Anti-SLAPP motion notwithstanding the absence of a final  
7 judgment. (*Batzel v. Smith* (9th Cir. 2003) 333 F.3d 1018; *Greensprings Bap. Christian*  
8 *Fellowship v. Cilley* (9<sup>th</sup> Cir. 2010) 629 F.3d 1064) According to the 9<sup>th</sup> Circuit in *Batzel*:  
9 "Because California law recognizes the protection of the anti-SLAPP statute as a  
10 substantive immunity from suit, this Court, sitting in diversity, will do so as well." (*Id.* at  
11 1025-1026)

12 Based on the holding in *Batzel* DOFF's notice of appeal regarding the Court's  
13 denial of the Anti-SLAPP motion was an appealable order.

14 **3. AN INTERLOCUTORY APPEAL DIVESTS THE DISTRICT COURT OF**  
15 **JURISDICTION OVER THOSE ASPECTS OF THE CASE INVOLVED IN**  
16 **THE APPEAL**

17 Filing a valid notice of appeal transfers jurisdiction over the matters properly  
18 appealed to the court of appeals. During pendency of the appeal, the district court  
19 generally is divested of jurisdiction over those aspects of the case involved in the appeal.  
20 (See *Griggs v. Provident Consumer Discount Co.*(1982) 459 U.S. 56, 58, 103 S.Ct. 400  
21 (per curiam); *Mayweathers v. Newland* (9<sup>th</sup> Cir. 2001) 258 F.3d 930, 935) The filing of a  
22 notice of interlocutory appeal divests the district court of jurisdiction over the particular  
23 issues involved in the appeal. (*City of Los Angeles, Harbor Division v. Santa Monica*  
24 *Baykeeper* (2001) 254 F.3d 882, 886)

25 "This divestiture of district court jurisdiction does not rest on a statute ... Rather, it  
26 is a judgemade doctrine designed to avoid the confusion and waste of time that might flow  
27 from putting the same issues before two courts at the same time. It should not be employed  
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1 to defeat its purposes nor to induce needless paper shuffling.” (Kern Oil & Refining Co. v.  
2 Tenneco Oil Co. (9<sup>th</sup> Cir. 1988) 840 F.2d 730, 734 (emphasis added; internal quotes  
3 omitted)) However, the district court may act to assist the appellate court in the exercise of  
4 its jurisdiction—i.e., to enter orders appropriate to preserve the status quo while the case is  
5 pending in the court of appeals. (*Mayweathers v. Newland* (9<sup>th</sup> Cir. 2001) 258 F.3d 930,  
6 935; *Natural Resources Defense Council, Inc. v. Southwest Marine Inc.* (9<sup>th</sup> Cir. 2001) 242  
7 F3d 1163, 1166)

8 4. **THE COURT SHOULD STAY THE ENTIRE CASE BECAUSE THE ISSUES**  
9 **RAISED IN PLAINTIFFS’ FIRST AMENDED COMPLAINT ARE**  
10 **APPARENTLY SO INTERTWINED WITH THE ISSUES RAISED IN THE**  
11 **ORIGINAL COMPLAINT THAT THE COURT HAS DECLINED TO**  
12 **ACCEPT A NEW ANTI-SLAPP MOTION**

13 As is set forth above, the filing of an interlocutory notice of appeal only divests the  
14 district court of jurisdiction over those aspects of the case which are being appealed.  
15 Because Plaintiffs filed their first amended complaint prior to DOFF’s notice of appeal of  
16 the denial of the Anti-SLAPP motion targeting the original complaint, the operative  
17 pleading is now the first amended complaint. Arguably the automatic stay may not affect  
18 the causes of action raised in the first amended complaint. The Court’s order of June 29,  
19 2011, however, reflects the position that it does affect the causes of action raised in the  
20 first amended complaint.

21 In order to preserve her rights afforded under the Anti-SLAPP statute, Taitz  
22 therefore requests that a stay be imposed as to all parties. The reasoning applied by the 9<sup>th</sup>  
23 Circuit in *Batzel* regarding the appealability of the denial of an Anti-SLAPP is persuasive  
24 to Taitz’s motion for stay:

25 “The purpose of an anti-SLAPP motion is to determine  
26 whether the defendant is being forced to defend against a  
27 meritless claim... Because the anti-SLAPP motion is designed  
28 to protect the defendant from having to litigate meritless cases  
aimed at chilling First Amendment expression, the district  
court's denial of an anti-SLAPP motion would effectively be  
unreviewable on appeal from a final judgment. As the

1 California Senate Judiciary Committee noted before the law's  
2 enactment:

3 Without [the right of immediate appeal], a defendant will have  
4 to incur the cost of a lawsuit before having his or her right to  
5 free speech vindicated.... [W]hen a meritorious anti-SLAPP  
6 motion is denied, the defendant, under current law, has only  
7 two options. The first is to file a writ of appeal, which is  
8 discretionary and rarely granted. The second is to defend the  
9 lawsuit. If the defendant wins, the anti-SLAPP law is useless  
10 and has failed to protect the defendant's constitutional rights.

11 If the defendant were required to wait until final judgment to  
12 appeal the denial of a meritorious anti-SLAPP motion, a  
13 decision by this court reversing the district court's denial of the  
14 motion would not remedy the fact that the defendant had been  
15 compelled to defend against a meritless claim brought to chill  
16 rights of free expression. Thus, a defendant's rights under the  
17 anti-SLAPP statute are in the nature of immunity: They protect  
18 the defendant from the burdens of trial, not merely from  
19 ultimate judgments of liability.” (*Batzel v. Smith* (9th Cir.  
20 2003) 333 F.3d 1018, 1025-1026 (internal citations omitted))

21 If the stay as to the entire case is not imposed, Taitz will be forced to participate in  
22 depositions, discovery, and potentially other costly procedural motions, in direct  
23 contradiction with the intent of the Anti-SLAPP statute: it protects defendants from the  
24 burdens of trial, not merely from the ultimate judgments of liability.

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#### 31 4. CONCLUSION

32 Based on the foregoing, Defendants respectfully request that the Court stay the  
33 entire action pending disposition of DOFF's appeal and allow the parties a reasonable time  
34 period after the disposition of DOFF's appeal to file a responsive pleading responding to  
35 Plaintiffs' first amended complaint.

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3 DATED: July 8, 2011  
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5 By \_\_\_\_\_  
6 Dr. Orly Taitz, ESQ  
7

8 **FEDERAL COURT PROOF OF SERVICE**

9 I certify under penalty of perjury and under the laws of  
10 CA that I served the parties in this case via ECF on  
11  
12 07.08.2011

13 /s/Orly Taitz  
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